IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 3237 of 1995

Between:

Smt. Pachipulusu Chittemma, W/o Balayya
R/o Rajendra Palem @ Surandrapalem, Koyyuru Mandal, Visakapatnam District.

..... PETITIONER

AND

1 Govt. of A.P., Rep by its Secretary, Social Welfare Dept.,
Secretariat, Hyderabad
2 Collector & Agent to Government
Visakapatnam
3 Agency Divisional Officer-cum-Special Deputy Collector
Paderu, Visakapatnam District
4 Natturu Demudu S/o Somulu
R/o Koyyuru Mandal of Visakapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ, Order or direction particularly a writ in the nature of CERTIORARI calling for all the records leading up to and including the Proceedings of G.O.Rt. No. 20, Dt. 19/01/1995 from the first Respondent and quash the same pass.

Counsel for the Petitioner: DR.P.B.VIJAY KUMAR

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following :

THE HONOURABLE SRI JUSTICE GHULAM MOHAMMED

WRIT PETITION NO.3237 OF 1995

ORDER:

This writ petition is filed assailing G.O.Rt.no.20 dated 19.1.1995 issued by the first respondent and to quash the same as being illegal, arbitrary and unconstitutional.

The case of the petitioner is that she purchased an extent of Ac.6-95 cents of dry and wet land situated in Rajenderpalem in Koyyuru Mandal from Sri Nattu Sriramulu and his father Jogidora under a registered sale deed for a valid consideration of Rs.8,000/-. The said sale was called in question before the Agency Divisional Officer, Narsipatnam in A.M.P.No.232 of 1971 on the ground that the sale transaction is a benami transaction as the petitioner is a non-tribal and as such the said transaction is hit by the provisions of A.P.Scheduled Area Land Transfer Regulations, 1959 and sought for ejectment of the petitioner and restoration of lands to the original owner.

Initially the primary authority after considering the evidence and material placed before it ordered for ejectment and restoration of the lands to the original land owners. The said order was questioned by the writ petitioners before the second respondent-Agent to the Government, Vishakapatnam and the second respondent by an order dated 15.5.1977 remitted the matter for fresh hearing as the petitioner was not a party to the proceedings in A.M.P.No.232 of 1971, dated 28.11.1974. On

remand, the matter was considered by the third respondent and after hearing both the parties, by an order dated 30.9.1978 in L.T.R.No.604 of 1978 the third respondent restored the lands to the petitioner herein. The said order was challenged by the fourth respondent before the second respondent-Agent to the Government and Collector, Vishakapatnam, who allowed the appeal on the ground that the petitioner has no means to purchase the said land and the land was purchased for the benefit of Datla Suryanarayanaraju and as such held that it was a benami transaction for the benefit of the said person. It was also held that the petitioner herself was a non-tribal and hence, the transaction is hit by Section-4 of the A.P.Scheduled Area Land Transfer Regulations of 1959.

Aggrieved by the said order passed by the second respondent, a revision was preferred by the writ petitioner before the first respondent-Government. Mainly two contentions were raised by the petitioner in revision before the Government; 1) that the transaction is not a benami one, 2) that the petitioner is a tribal lady. The Government having considered the evidence also found that the petitioner, at the relevant time has no means to purchase the said land in question and it was purchased benami for the benefit of Dalta Suryanarayanaraju, who is a non-tribal. On the question whether the petitioner is a tribal or not, the second respondent, on evidence, found that inasmuch as the petitioner's mother married to a person belonging to Vysya community and the writ petitioner was born to them and the petitioner herself was given in marriage to a non-tribal, held that the petitioner cannot be considered as tribal and accordingly dismissed the revision by impugned G.O.Rt.20 dated 19.10.1995. Aggrieved by the same, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for social welfare appearing for the respondents.

Both the authorities categorically found that the petitioner, at the relevant point of time had no means to purchase the land in question independently and the land was purchased benami only for the benefit of one Datla Suryanarayanaraju. It was also observed by the authorities below that neither the petitioner's father nor her husband had any properties to purchase the said land by the petitioner. It was also, on evidence, found that the petitioner does not belong to Scheduled Tribe community and her father and husband were also non-tribals and they belong to vysya community, which is a non-tribal community.

In these facts and circumstances of the case, the conclusions reached by both the authorities below that the transaction is a benami transaction and the finding that the petitioner is a non-tribal, being a question of fact, in the absence of pointing out any infirmities in the reasons given by the authorities, does not warrant any interference by this Court under Article 226 of the Constitution of India.

In the result, I do not find any merits in the writ petition and it is accordingly dismissed. No costs.

18.11.2004.

mdaa/nrg.

Copy to:

1 The Secretary, Govt. of A.P., Social Welfare Dept.,
Secretariat, Hyderabad
2 Collector & Agent to Government
Visakapatnam
3 Agency Divisional Officer-cum-Special Deputy Collector
Paderu, Visakapatnam District

4. two C.Cs to G.P.for Social welfare, High Court of A.P., Hyderabad.

5. Two C.D.copies.